

AMENDED IN ASSEMBLY AUGUST 16, 2005

AMENDED IN SENATE APRIL 19, 2005

SENATE BILL

No. 837

Introduced by Senator Dutton

February 22, 2005

An act to amend Sections 6611, 12125, 12126, and ~~12128 of, and to repeal Sections 12129 and 12129 of, to amend and repeal Section 12128 of, and to repeal Section 12130 of,~~ the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 837, as amended, Dutton. Alternative Protest Pilot Project.

Existing law provides for ~~the Alternative Protest Pilot Project~~ *a pilot project for alternative protest procedures* in connection with state agency acquisition of goods and services, including the acquisition of information technology goods and services, and requires the Department of General Services to administer the project until January 1, 2007, or until the pilot project has been applied to at least 25 contracts, including at least 5 information technology contracts, whichever occurs later.

This bill would delete the ~~repeal date and the~~ minimum contract attainment provisions, *and would extend the repeal date until December 31, 2011, as specified.* The bill would rename the project as the Alternative Protest Process.

This bill would also prohibit an unsuccessful bidder from using the ~~alternate protest process~~ *Alternative Protest Process*, and would instead provide for the filing of a writ of mandate, as specified.

Existing law requires the Department of General Services to submit electronically to the Legislature a report regarding the pilot project within 90 days after the termination of the project.

This bill would instead require the department to submit to the Legislature a report and recommendations regarding the Alternative Protest Process on or before January 1, 2007, and on or before January 1, 2010, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6611 of the Public Contract Code is
2 amended to read:
3 6611. (a) Notwithstanding any other provision of law, the
4 Department of General Services may, relative to contracts for
5 goods, services, information technology, and
6 telecommunications, use a negotiation process if the department
7 finds that one or more of the following conditions exist:
8 (1) The business need or purpose of a procurement or contract
9 can be further defined as a result of a negotiation process.
10 (2) The business need or purpose of a procurement or contract
11 is known by the department, but a negotiation process may
12 identify different types of solutions to fulfill this business need or
13 purpose.
14 (3) The complexity of the purpose or need suggests a bidder's
15 costs to prepare and develop a solicitation response are extremely
16 high.
17 (4) The business need or purpose of a procurement or contract
18 is known by the department, but negotiation is necessary to
19 ensure that the department is receiving the best value or the most
20 cost-efficient goods, services, information technology, and
21 telecommunications.
22 (b) When it is in the best interests of the state, the department
23 may negotiate amendments to the terms and conditions, including
24 scope of work, of existing contracts for goods, services,
25 information technology, and telecommunications, whether or not
26 the original contract was the result of competition, on behalf of
27 itself or another state agency.
28 (c) (1) The department shall establish the procedures and
29 guidelines for the negotiation process described in subdivision
30 (a), which procedures and guidelines shall include, but not be
31 limited to, a clear description of the methodology that will be

1 used by the department to evaluate a bid for the procurement
2 goods, services, information technology, and
3 telecommunications.

4 (2) The procedures and guidelines described in paragraph (1)
5 may include provisions that authorize the department to receive
6 supplemental bids after the initial bids are opened. If the
7 procedures and guidelines include these provisions, the
8 procedures and guidelines shall specify the conditions under
9 which supplemental bids may be received by the department.

10 (d) An unsuccessful bidder shall have no right to protest the
11 results of the negotiating process undertaken pursuant to this
12 section. As a remedy, an unsuccessful bidder may file a petition
13 for a writ of mandate *in accordance with Section 1085 of the*
14 *Code of Civil Procedure*. The venue for the petition for a writ of
15 mandate shall be Sacramento, ~~California, and an~~ *California*. An
16 action filed pursuant to this subdivision shall be given preference
17 by the court.

18 SEC. 2. Section 12125 of the Public Contract Code is
19 amended to read:

20 12125. There is hereby established the Alternative Protest
21 Process to be administered by the Department of General
22 Services.

23 SEC. 3. Section 12126 of the Public Contract Code is
24 amended to read:

25 12126. (a) Notwithstanding any other provision of law, any
26 department or agency may use the solicitation and alternative
27 protest procedures outlined in this chapter for solicitations
28 authorized under Chapter 2 (commencing with Section 10290) or
29 Chapter 3 (commencing with Section 12100). The Department of
30 General Services shall develop procedures and guidelines for the
31 implementation of this alternative protest process.

32 (b) To be eligible for this alternative protest process, the
33 contracting department shall agree to participate in the ~~alternative~~
34 ~~protest process~~ *Alternative Protest Process* and the Department
35 of General Services shall indicate that the proposed solicitation
36 shall be conducted as part of the ~~alternative protest process~~
37 *Alternative Protest Process* prior to release of the solicitation.
38 Submission of a bid constitutes consent for participation in the
39 ~~alternative protest process~~ *Alternative Protest Process*. Any
40 protests filed in relation to the proposed contract award shall be

1 conducted under the procedures set forth by the Department of
2 General Services for the ~~alternative protest process~~. *Alternative*
3 *Protest Process*.

4 (c) Notwithstanding any other provision of law to the contrary,
5 any bid protest conducted under this chapter shall include one or
6 more of the following alternative procedures:

7 (1) The ~~protest process~~ *Alternative Protest Process* shall not
8 prevent the commencement of work in accordance with the terms
9 of any other contract awarded pursuant to this chapter. A contract
10 may be entered into pending a final decision on the protest.

11 (2) The Department of General Services shall review the
12 protest within seven days of the filing date to determine if the
13 protest is frivolous. If determined to be frivolous, the protest
14 shall not proceed under this chapter until the bidder posts a
15 protest bond in an amount not less than 10 percent of the
16 estimated contract value, as determined by the Department of
17 General Services in the solicitation.

18 (3) The Director of General Services shall issue a decision
19 within a period not to exceed 45 days from the date the protest is
20 filed.

21 (4) Arbitration, as defined and established by the Department
22 of General Services, shall be the resolution tool.

23 (d) Authority to protest under this chapter shall be limited to
24 participating bidders.

25 (1) Grounds for major information technology acquisition
26 protests shall be limited to violations of the solicitation
27 procedures and that the protestant should have been selected.

28 (2) Any other acquisition protest filed pursuant to this chapter
29 shall be based on the ground that the bid or proposal should have
30 been selected in accordance with selection criteria in the
31 solicitation document.

32 SEC. 4. Section 12128 of the Public Contract Code is
33 amended to read:

34 12128. ~~The~~ *(a) The Alternative Protest Process shall*
35 *continue until December 31, 2011. The Department of General*
36 *Services shall apply this chapter to the following categories:*

37 ~~(a)~~

38 *(1) Information technology and ancillary services.*

39 ~~(b)~~

40 *(2) Material, supplies, equipment, and ancillary services.*

(b) *This chapter shall be operative until December 31, 2011, and as of that date is repealed, unless a later enacted statute that is enacted before December 31, 2012 deletes or extends that date.*

SEC. 5. *Section 12129 of the Public Contract Code is amended to read:*

12129. The Department of General Services shall electronically submit a report *and recommendations* to the Legislature regarding the ~~pilot project within 90 days after the termination of the project~~ *Alternative Protest Process on or before January 1, 2007, and on or before January 1, 2010.* The report shall include the following:

(a) The percentage of bids with values under five hundred thousand dollars (\$500,000), under one million dollars (\$1,000,000), and over one million dollars (\$1,000,000) or more ~~not in the pilot project that were not subject to the Alternative Protest Process that were protested with corresponding data for solicitations issued pursuant to the pilot project.~~

(b) *The percentage of bids with values under five hundred thousand dollars (\$500,000), under one million dollars (\$1,000,000), and over one million dollars (\$1,000,000) that were subject to the Alternative Protest Process that were protested.*

~~(b)~~
(c) The number of protests determined to be frivolous by the Department of General Services, subject to this chapter, with corresponding data for solicitations issued pursuant to existing procedures.

~~(e)~~
(d) The percentage of contracts awarded under the ~~pilot project~~ *Alternative Protest Process* that were subsequently challenged in a court of law with corresponding data for solicitations issued pursuant to existing procedures.

~~(d) All costs of a protest incurred by state agencies subject to subdivision (b) of Section 12126 from the original date filed, until final resolution. This shall include all costs associated with a successful protest and commencement of work under subdivision (b) of Section 12126 from the original date filed, until final resolution, with corresponding data for solicitations issued pursuant to existing procedures.~~

1 (e) The length of time to resolve protests pursuant to this
2 chapter and the corresponding data for solicitations issued
3 pursuant to existing procedures.

4 ~~SEC. 5. Section 12129 of the Public Contract Code is~~
5 ~~repealed.~~

6 SEC. 6 Section 12130 of the Public Contract Code is
7 repealed.

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